

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LARRY GENE BUCK, #1068144,	§	
	§	
Petitioner,	§	
v.	§	Civil Action No. 3:08-CV-2087-L
	§	
NATHANIEL QUARTERMAN, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

ORDER

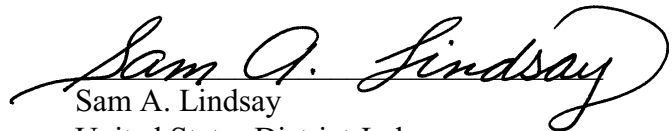
Before the court are the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, filed April 23, 2009. Petitioner filed objections on May 5, 2009.

The court dismissed Petitioner's habeas petition without prejudice on February 23, 2009, but without prejudice to his right to file a motion for leave to file a second or successive section 2254 petition in the United States Court of Appeals for the Fifth Circuit. On April 20, 2009, Petitioner filed a motion to proceed *in forma pauperis*. The magistrate judge recommends denying his motion insofar as it appears to appeal the court's order and judgment dismissing his petition. The magistrate judge states that any appeal would be untimely, and that if construed as a motion pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure, Petitioner did not show excusable neglect, good cause for not meeting the deadline, or lack of notice of the judgment. Petitioner has filed objections stating that he has filed two motions for leave to file a second or successive petition in the United States Court of Appeals for the Fifth Circuit.

Having reviewed the pleadings, file and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct. The

magistrate judge's findings and conclusions are therefore **accepted** as those of the court. Petitioner's habeas petition has been dismissed, and he has not filed an appeal of the court's judgment dismissing his petition. Accordingly, his request to proceed *in forma pauperis* is moot. Petitioner's motions to the appellate court are not appeals of this court's decision, but rather seek leave to file an entirely new habeas petition. Accordingly, the court **overrules** Petitioner's objections and **denies** his Application to Proceed *In Forma Pauperis*.

It is so ordered this 8th day of May, 2009.


Sam A. Lindsay
United States District Judge